



# MAINE REAL ESTATE NEWS

VOL. 25, NO.2

SUMMER 1999

## From the Director's Desk

*Carol J. Leighton*

### NOTICE OF COMMISSION RULEMAKING PROPOSAL

The Commission will hold a public hearing at 9:00 a.m. on Thursday, August 26, 1999 at its office in Gardiner to receive comments from licensees and the public regarding proposed amendments to Chapter 300, Section 1, Chapter 330, Sections 9, 15, 16, 17, 18 and 19, Chapter 350, Sections 5 and 9, Chapter 360, Sections 2, 4 and 5, and Chapter 380, Section 2. Notice of the public hearing will also appear, approximately 17-24 days prior to the hearing in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal, and the Waterville Morning Sentinel. Notice of state agency rulemaking is published every Wednesday.

The proposed amendments are as follows (old language has been struck out and new language is underlined):

#### Chapter 300 General Information

##### Section 1. Meetings

Meetings shall be called by the Chairman or a majority of the members whenever such meetings are deemed necessary for carrying out the business of the Commission, but the Commission shall not meet less than ~~once each calendar month~~ four times a year.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The Commission has cancelled scheduled meetings due to weather conditions and at least in one instance due to the shutdown of State Government. The proposed amendment will allow the Commission to meet as needed without violating its own rule.

### Chapter 330 Minimum Standards of Practice

#### Section 9. Agency Relationship Disclosure Procedures

A. The Maine Real Estate Commission adopts by reference Agency ~~Disclosure Form #1 Relationships Form #2~~. (COPY OF PROPOSED FORM #2 ON PAGE 5.)

B. Except as provided in subsection C, a licensee shall furnish a prospective buyer or seller with a copy of Agency ~~Disclosure Form #1 Relationships Form #2~~ when there is a substantive communication regarding a real estate transaction at the first occurrence of by either a face-to-face meeting or a written communication with the prospective buyer or seller, ~~where there is a substantive communication regarding a real estate transaction.~~

C. A licensee is not required to provide a copy of the form to a prospective buyer or seller in the following instances:

1. The real estate consists of less than one or more than four (4) residential dwelling units;

2. The licensee is acting solely as a principal and not as an agent for another;

3. The written communication from the licensee is a solicitation of business; or

4. The licensee is meeting or communicating with a buyer or seller who has already obtained agency representation.

D. The licensee shall complete the appropriate section of the form relating to ~~disclosure of the agency's policy and sign the form the presentation of the form.~~

E. A licensee contacting another licensee regarding the sale or purchase of real estate shall disclose the nature of the agency representation at the time of the first contact. The licensee being contacted shall be responsible for disclosing that information to

### NEW CONTINUING EDUCATION REQUIREMENTS EFFECTIVE SEPTEMBER 18, 1999

The Spring 1999 edition of the Real Estate News reported changes made to the license law. The change that has resulted in the greatest number of calls to the Commission is that regarding the increased continuing education requirement. There appears to be some confusion surrounding this issue and the Commission hopes this article will help clarify the new requirements.

The increase to 15 clock hours of continuing education to renew or activate a license takes effect on September 18, 1999. If your active associate broker or broker license expires on or after that date, you will need 15 clock hours to renew that license, even if you renew the license before September 18, 1999. The new requirement also applies to those whose license expired before September 18 but renew on or after that date.

Inactive licensees seeking to activate within two years of September 18, 1999 will need 15 clock hours to activate. Licensees who remain inactive for more than 2 but less than 4 years will need 22 hours to activate. Licensees who remain inactive continuously for more than 4 but less than 6 years will need 30 hours. Licensees who remain continuously inactive for 6 or more years will be required to pass an examination.

*It is important to note that the length of time a license was inactive prior to the effective date of this law will not be counted. For the purposes of the new requirement, the first year begins September 18, 1999.*

Feel free to contact the Commission staff for a list of currently approved courses if you find you will need additional hours to renew your license.

the client. Said disclosures may be oral or written.

F. The agency shall retain a copy of the form ~~signed by the prospective buyer or seller. If that buyer or seller refuses to sign the disclosure form, the licensee shall note that fact on a copy of the Agency Disclosure Form #1. The signed or noted copy shall be retained by the agency for a period of at least two years from the date of the signature or note presentation.~~

Proposed Effective Date: September 18, 1999  
(The Commission would not enforce the use of Form #2 until January 1, 2000).

Concise Summary of Proposed Amendment: The proposed amendment will replace Agency Disclosure Form #1 with Agency Relationships Form #2. Where necessary Form #2 is inserted to replace the reference to Form #1. Paragraph C (1) is consistent with the statutory change to §13279, which limits the requirement to provide a written real estate brokerage agency relationship disclosure form to buyers and sellers of residential property. Form #2, as proposed, will not provide for signatures of the buyer or seller nor will it include a check-off of the company's agency relationship policy. As such, the references to those two provisions are repealed and replaced with the reference to the presentation of the form. The proposed Form #2 appears on page 5.

#### **Section 15. Licensee's Duty to Obtain and Provide Disclosure Information on Private Water Supply, Insulation, Waste Disposal System and Known Hazardous Materials**

A. A listing licensee shall be responsible for obtaining information necessary to make disclosures, as set forth in sections 16, 17, 18 and 19, to buyers and shall make a reasonable effort to assure that the information is conveyed to a selling licensee or a licensee representing the buyer.

B. A selling licensee shall be responsible for obtaining from the listing licensee the information necessary for making disclosures, as set forth in sections 16, 17, 18 and 19, and for assuring that the disclosures are made to buyers.

C. A licensee representing the buyer shall be responsible for obtaining from the listing licensee, or the seller in transactions where the property is not listed with an agency, the information necessary for making disclosures, as set forth in sections 16, 17, 18 and

19, and for assuring that the disclosures are made to the buyer.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment clarifies the licensee's duty to obtain and provide written property disclosure information as set forth in sections 16, 17, 18 and 19, which require disclosures for specific types of properties.

#### **Section 16. Private Water Supply Disclosure**

A ~~listing~~ licensee, ~~when listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component~~ property served by a private water supply, and a licensee representing the buyer in such transactions ~~where~~ when the property is not listed with an agency, shall ask the seller for the following information:

- A. Type of system;
- B. Location;
- C. Malfunctions;
- D. Date of installation;
- E. Date of most recent water test; and
- F. Whether or not the seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

Such information and any other information pertinent to the private water supply shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the private water supply is not available shall also be conveyed, in writing, when such is the case.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment requires written disclosure of the private water supply for certain types of residential real estate.

#### **Section 17. Insulation Disclosure**

A ~~listing~~ licensee, ~~when listing a single-family residential property, a multifamily property or a commercial property with a residential component~~ property, and a licensee representing the buyer in such transactions ~~where~~ when the property is not listed with an agency, shall ask the seller for the following information: (A) type of insulation and (B) location of insulation. In addition, the licensee shall make a reasonable effort to inspect visually the following:

- A. Attic;

- B. Crawl Space;
- C. Exterior walls.

Such information and any other information pertinent to the insulation shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information pertinent to the insulation is not available shall be conveyed, in writing, when such is the case.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment requires written disclosure of the type and location of insulation for residential properties only.

#### **Section 18. Waste Disposal System Disclosures**

A. A ~~listing~~ licensee, ~~when listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component~~ property served by a private waste disposal system, and a licensee representing the buyer in such transactions ~~where~~ when the property is not listed with an agency, shall ask the seller for the following information:

- 1. Type of system;
- 2. Size of tank;
- 3. Type of tank;
- 4. Location of tank;
- 5. Malfunctions of tank;
- 6. Date of installation of tank;
- 7. Location of leach field;
- 8. Malfunctions of leach field;
- 9. Date of installation of leach field;
- 10. Date of most recent servicing of system; and
- 11. Name of the contractor who services the system.

Such information and any other information pertinent to the waste disposal system shall be conveyed, in writing, to a buyer prior to or during preparation of an offer. The fact that information regarding the waste disposal system is not available shall also be conveyed, in writing, when such is the case.

B. A ~~listing~~ licensee, ~~when listing a single-family residential property, a multifamily property, a residential lot or a commercial property with a residential component~~ property served by a municipal or quasi-public waste disposal system, and a licensee representing the buyer in such transactions ~~where~~ when the property is not listed with an agency, shall ask the seller if the seller has

experienced any system or line malfunction. This information shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment requires written disclosure about the private waste disposal system, or a municipal or quasi-public disposal system, for residential real estate. The proposed amendment requires disclosure for residential properties only.

### Section 19. Known Hazardous Materials

A. A licensee shall keep himself informed regarding of any federal, state, or local laws, rules, regulations or ordinances concerning known hazardous materials that may impact negatively upon the health and well being of clients and customers.

B. A listing licensee, and a licensee representing the buyer in transactions where when the property is not listed with an agency, shall disclose, in writing, whether the seller makes any representations regarding ask the seller whether or not the seller has any knowledge of current or previously existing known hazardous materials on or in the real estate, including but not limited to: In addition, the licensee shall give a written statement to the buyer encouraging the buyer to seek information from professionals regarding any specific hazardous material issue or concern. Such written representation and statement shall be conveyed to a buyer prior to or during the preparation of an offer.

A. Asbestos;

B. Lead based paint;

C. Radon;

D. Underground storage tanks.

C. A licensee listing a single-family residential property, a multifamily property, a commercial property with a residential component and a licensee representing the buyer in such transactions when the property is not listed with an agency, shall ask the seller whether the seller has any knowledge of current or previously existing asbestos, radon, lead based paint and underground storage tanks. Such information and any other information pertinent to hazardous materials shall be conveyed, in writing, to a buyer prior to or during the preparation of an offer. The fact that information regarding hazardous materials is not available shall

also be conveyed, in writing, when such is the case. A listing licensee, and a licensee representing the buyer in transactions where the property is not listed with an agency, shall give a written statement to the buyer encouraging that buyer to seek information from professionals regarding any specific issue or concern.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment separates the hazardous material disclosure provision into three paragraphs. Paragraph A requires all licensees to keep informed regarding known hazardous materials. Paragraph B requires licensees listing any type of real estate, including commercial and industrial, to disclose in writing whether the seller makes any representations regarding known hazardous materials and to provide a written statement advising the buyer to seek information from professionals regarding any specific hazardous material concerns. Paragraph C requires a licensee listing a residential property or a buyer broker representing the buyer when the property is not listed, to ask the seller whether the seller has knowledge of currently existing or previously existing specific hazardous materials: asbestos, radon, lead based paint and underground storage tanks. The written disclosures and statements required in paragraphs B and C are required to be given to the buyer prior to or during the preparation of an offer.

## Chapter 350 Adjudicatory Hearings

### Section 5. Parties

Parties in a Commission hearing, with the exception of the Director or his the Director's designee and an intervenor, shall be limited to:

A. The person against whom the allegation is made; or

B. The person whose qualifications are in question; or

C. The person who is aggrieved by the decision of the Director and who petitions the Commission for a hearing.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment makes the section gender neutral and repeals from the list of parties to a Commission hearing a person aggrieved by the Director's decision to dismiss a complaint, consistent with the

statutory repeal of a complainant's right to a hearing.

### Section 9. Appeals of Director's Decisions

The decision of the Director may be appealed in any of the following circumstances:

A. Denial of an examination for licensing; or

B. Denial of a license or license renewal; or

C. Dismissal of a complaint;

D. Refusal to pursue an investigation.

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment is consistent with the statutory repeal of a complainant's right to a hearing when the Director dismisses or fails to pursue a complaint.

## Chapter 360 Prerequisites To Licensure By Individuals

### Section 2. Definitions

D. Degree Program Meeting Commission Established Guidelines. Degree program shall mean a program in business requiring a minimum of 60 credit hours of study, of which at least 12 credit hours focus on real estate. The first 30 credit hours shall include 9 12 credit hours of real estate course work which shall include covering the minimum competencies defined in the Commission models "Introduction to Real Estate," "Associate Broker Law," and "Associate Broker Practice." The remaining 3 credit hours shall consist of course work which covers the minimum competencies defined in the Commission model entitled and "The Role of the Designated Broker."

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment defines a degree program as a 60 credit hour business course including 12 credit hours earned for the 4 real estate courses identified by the Commission. In the absence of a real estate degree program, it is unnecessary to specify that the first 30 hours must include specific real estate courses.

### Section 4. Educational Requirement for Licensure

A. Real Estate Broker

2. An applicant who has one year of experience as a sales agent within three years immediately preceding the date of application must submit evidence of satisfactory completion of a two-year real estate busi-



~~ness degree program as defined in Section 2 (D) of this chapter. If the license application is not submitted within one year of completion of the educational requirements, the applicant must submit evidence of completion of course work which covers the minimum competencies defined in the Commission model entitled "The Role of the Designated Broker" within the year immediately preceding the date of the application. The license application must be submitted within five (5) years of completion of the course work with the exception that the Commission model entitled "Role of the Designated Broker" must be completed within one year immediately preceding application for the license.~~

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment changes the reference to a two year "real estate" degree to a business degree consistent with the proposed amendment to Section 2 (D) and limits the completion of the degree for qualification for licensure to 5 years from completion of the course. The one year limit for completion of "The Role of the Designated Broker" course remains the same.

#### B. Associate Real Estate Broker

1. An applicant who has practiced as a real estate sales agent for two years within the five years immediately preceding the date of application must either:

b. Submit evidence of satisfactory completion of 12 credit hours of course work ~~completed as part of a business in a degree program which shall include 6 credit hours of course work which covers the minimum competencies defined in the Commission model entitled "The Associate Broker." The remaining 6 credit hours shall include be~~ core courses from the business degree program. For purposes of this section, credit will not be granted for course work which covers the minimum competencies defined in the Commission model entitled "Introduction to Real Estate." ~~If the license application is not submitted within one year of completion of the 12 credit hours of course work, the applicant must submit evidence of satisfactory completion of course work which covers the minimum competencies defined in the Commission model entitled "The Associate Broker," within the year immediately preceding the date of applica-~~

~~tion. Applicants may complete the "Associate Broker" courses at an alternate degree granting institution. The 12 credit hours of course work must be completed within the five (5) years from the issue date of the applicant's sales agent license.~~

Proposed Effective Date: September 18, 1999

Concise Summary of the Proposed Amendment: The proposed amendment clarifies the degree as a business degree consistent with the proposed amendment to Section 2 (D) and requires that the application for license be submitted within 5 years from the issue date of the sales agent license. The 5 year time frame is consistent with the underlying statutory provision - §13199 (2)(B).

~~2. An applicant who does not have qualifying experience as a real estate sales agent must submit evidence of satisfactory completion of the first year in a real estate degree program as described in section 2(D) of this chapter; and pass the written sales agent examination.~~

Proposed Effective Date: September 18, 1999

Concise Summary of the Proposed Amendment: The proposed amendment repeals one of the options to qualify for an associate broker license consistent with the repeal of the underlying statute.

#### ~~D. Timeshare Agent~~

~~An applicant for a timeshare agent license must either:~~

~~1. Submit evidence of satisfactory completion of the qualifying educational program which covers the minimum competencies defined in the Commission model entitled "Timeshare Sales" and apply for licensure within one year of completion of such course; or~~

~~2. Pass a written timeshare agent examination.~~

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment repeals the qualifications for licensure as a timeshare agent consistent with the repeal of the underlying statute.

#### Section 5. Examinations

Examinations shall be written to test the minimum competencies established by the Commission for each level of licensure. A minimum grade of 75% shall be required to pass the examination. The number of ques-

tions for each examination shall be as follows:

A. Associate Broker	150;
B. Sales agent	100;
<del>C. Timeshare agent</del>	<del>50;</del>
<del>D. Nonresident</del>	<del>100;</del>
<del>E. License renewal</del>	<del>100;</del>
<del>F. License reactivation</del>	<del>100.</del>

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment repeals the timeshare agent exam reference consistent with the repeal of the underlying statutory requirement.

### Chapter 380 Fees

#### Section 2. Biennial License Fees

A. Real Estate Agency	\$100.00
B. Real Estate Broker	\$100.00
C. Associate Real Estate Broker	\$100.00
D. Real Estate Sales Agent	\$100.00
<del>E. Timeshare Agent</del>	<del>\$100.00</del>
<del>F. Inactive License</del>	<del>\$ 85.00</del>

Proposed Effective Date: September 18, 1999

Concise Summary of Proposed Amendment: The proposed amendment repeals the fee for a biennial timeshare agent license consistent with the repeal of the underlying statutory provision.

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#### Editors

Karen L. Bivins  
Laurel H. Grady

#### Mailing Address:

Dept of Professional & Financial  
Regulation  
Maine Real Estate Commission  
35 State House Station  
Augusta ME 04333-0035

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(207) 624-8563

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Dept. of Professional & Financial Regulation  
Office of Licensing & Registration  
**MAINE REAL ESTATE COMMISSION**

35 State House Station Augusta ME 04333-0035

**AGENCY RELATIONSHIPS**

*This form provides a consumer guide to agency relationships in a real estate transaction.  
Maine law requires that it be given to all prospective residential buyers/sellers.*



**WHO IS A CLIENT?**

A client is a person who establishes an agency relationship with and agrees to be represented by an agent in a real estate transaction.

A **Seller** becomes a client of a real estate company by entering into a listing agreement with a licensee associated with a company. Depending on the type of property and the agreement, the listing may or may not be in writing. However, it is generally a good idea to have the agreement in writing so that the terms and the obligations of both the seller and the licensee/company are clearly established.

A **Buyer** becomes a client of a real estate company by entering into a buyer representation agreement with a licensee associated with a company. Although not required, it is generally a good idea to have the agreement in writing so that the terms and the obligations of both the buyer and the licensee/company are clearly established.

**WHO IS AN AGENT?**

An **Agent** is the licensee who by mutual agreement will act on your direction and represent your interests above all others in a real estate transaction.

Acting on your behalf, your agent will employ his/her best efforts to negotiate the best price and terms in a real estate transaction. Your agent owes utmost loyalty to you, the client, and must pass on to you any information he or she knows which might influence your decision to buy or sell. You can rely on your agent to preserve confidential information provided by you. You can expect to receive timely accounting of money or property related to and received during your relationship with your agent.

**WHAT IS A DUAL AGENT?**

In certain situations, a licensee may act as an agent for and represent both the buyer and the seller in the same transaction. This is called **dual agency** since one agent represents both parties and both parties remain clients of the company. The possibilities and consequences of dual agency representation must be explained to you by the licensee. *Both the buyer and the seller must consent to this type of representation in writing.*

Working with a dual agent is not the same as having your own exclusive agent. For instance, when representing both a buyer and a seller, the dual agent must not disclose to one party any confidential information obtained from the other party. Also, a dual agent may not be the advocate for either party and cannot negotiate for nor advise as to the price or terms of the transaction.

It is important that you discuss dual agency with the licensee in order to understand the limits of representation that a dual agent can provide. If the company you are working with practices disclosed dual agency, you must determine whether or not you would be willing to agree to limited representation by your agent.

**DO YOU WANT TO BE A  
CUSTOMER OR A CLIENT?**

Do you want to only receive information and assistance from a real estate licensee (in which case you would be a **Customer**) or do you wish to be represented by a licensee (in which case you would be a **Client**)? A licensee is *not required* to represent either the buyer or the seller. To understand your options, discuss this issue with the real estate licensee with whom you are working. It is important to you and the licensee that your working

relationship with the licensee be established and acknowledged and that you are aware of the services the licensee will or will not provide. Not all companies offer the same choices for representation. At your discretion, it may be advisable to obtain legal or other professional advice that you believe is necessary to protect your interests.

**THIS FORM IS NOT A CONTRACT**

It is important for you to know that this form is not a contract. The licensee's completion of the statement below acknowledges that you have been given the information required by Maine law regarding agency relationships so that you may make an informed decision as to the relationship you wish to establish with the licensee/company.

**To Be Completed By Licensee**

This form was presented on Mo \_\_\_\_ Day \_\_\_\_ Yr \_\_\_\_

to \_\_\_\_\_  
Name of Buyer(s) or Seller(s)

by \_\_\_\_\_  
Licensee's Name

on behalf of \_\_\_\_\_  
Company/Agency

**CURRENT CASES****Karen L. Bivins, Deputy Director**

*Maine Real Estate News publishes names of licensees who have received disciplinary action from the Maine Real Estate Commission which resulted in suspension or revocation of a license.*

♦♦♦♦♦♦♦♦♦♦

On May 13, 1999 the members of the Commission ratified their decision reached after a hearing on April 29, 1999 involving Bruce London II of Old Orchard Beach, Maine.

On October 30, 1998 London submitted an application for a sales agent license. In answer to the question inquiring whether the applicant had been convicted by any court for any offense, London responded no. A sales agent license was issued to London.

Subsequently, the Director learned that London had criminal convictions for operating a motor vehicle while under the influence of intoxicating liquor, allowing consumption of liquor by a minor, petty larceny, resisting arrest without violence, and driving while under the influence/manslaughter. In addition, London had convictions for several traffic offenses. At the time of his application, London deliberately answered untruthfully to the question about court convictions, because he believed that the Commission would not discover his convictions and that a truthful answer might hamper his chances for licensure.

London was found in violation of 32 M.R.S.A. § 13067(1)(A). The Commission members ordered the immediate revocation of London's sales agent license. They further ordered that London was not to reapply for a license for at least 60 days, and upon application must show evidence of successful completion of a 3 clock hour ethics course.

♦♦♦♦♦♦♦♦♦♦

**DEPARTMENT OF PROFESSIONAL  
& FINANCIAL REGULATION  
MAINE REAL ESTATE COMMISSION  
35 STATE HOUSE STATION  
AUGUSTA, ME 04333**

**COMMISSION STAFF**

**Carol J. Leighton**  
Director  
624-8520

**Karen L. Bivins**  
Deputy Director  
624-8524

**Judy S. Brown**  
Examiner  
624-8523

**Vickey L. Gray**  
Secretary  
624-8515

**Laurel H. Grady**  
Licensing & Education  
624-8518

**Deborah A. Fales**  
Licensing & Examinations  
624-8521

**Kimberly Baker-Stetson**  
Licensing & Examinations  
Related Boards 624-8522

Office Phone 624-8603

FAX 624-8637

Email

first.mi.last@state.me.us

Web

www.state.me.us/pfr/rec/  
index.htm

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☞ Yarmouth ☞

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